IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.325 OF 2007
WITH
CIVIL APPLICATION NO.1151 OF 2007

Shankar Ramchandra Bhoje & Anr. .. Appellants.
Vs.
Narayan Ramchandra Bhoje & Ors. .. Respondents.

Mr.R.D.Suryawanshi for the appellants.
Mr.B.K.Raje for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 6TH SEPTEMBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. Defendant Nos.1 and 2 have assailed the judgments of the courts below by which a suit filed by the respondents-plaintiffs for partition and separate possession of their share in the suit properties stands decreed.

3. Mr.Suryawanshi, learned counsel for the appellants submitted that the suit properties at serial nos.3 and 4 were purchased in the name of defendant no.1 and they are his self acquired properties. He submitted that there is no evidence to show that the properties at serial nos.1 to 3 were yielding any income or nucleus sufficient to purchase

the properties at serial nos.3 and 4. He further submitted that the properties at serial nos.3 and 4 which were acquired by defendant no.1 cannot be presumed to be joint family properties. The plaintiffs have not adduced any evidence to establish joint family income to purchase those properties. The burden was not shifted on defendant no.1 to prove that the properties at serial nos.3 and 4 are his self acquired properties. In support of this submission he placed reliance on **D.S. Lakshmaiah and Anr. V. L.Balasubramanyam AIR 2003 Supreme Court 3800**.

4. I perused the judgments of the courts below. The submission of Mr.Suryawanshi is based on the assumption that the properties at serial nos.3 and 4 were purchased by Ramchandra, father of the plaintiffs and defendant nos.1 and 2 out of the income from the properties at serial nos.1 to 3. In other words, according to Mr.Suryawanshi since the properties at serial nos.1 to 3 were not yielding any income there was no sufficient nucleus to purchase properties at serial nos.3 and 4. It has come in the evidence, which had not been either denied or challenged by defendant nos.1 and 2, that Ramchandra had purchased the properties at serial nos.3 and 4 in the name of defendant no.1 and for that purpose he

had borrowed monies from his nephews Bhaskar and Bhagoji. Even the vendor Babaram Kadam was examined and he affirmed that the sale deed though executed in the name of defendant no.1 alone, it was executed for and on behalf of the joint family and the consideration was paid by Ramchandra personally. It appears that defendant no.3 and the other son of Ramchandra, at the relevant time, were working in Mumbai and, therefore, the property was purchased by Ramchandra in the name of defendant no.1, since he was getting old. This has been considered by the courts below in proper perspective. The judgment relied upon is of no avail to the appellants in view of the findings of facts. The concurrent findings recorded by the courts below in my opinion are entirely based on the evidence on record which do not deserve interference by this court in the second appeal. No substantial question of law is raised. In the circumstances the second appeal is dismissed. Consequently, the civil application is also dismissed.

(D.B.BHOSALE, J.)